

AMENDED IN SENATE SEPTEMBER 4, 2009

AMENDED IN SENATE SEPTEMBER 2, 2009

AMENDED IN ASSEMBLY JUNE 2, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 754

Introduced by Assembly Member Chesbro

February 26, 2009

An act to amend Section 5778 of the Welfare and Institutions Code, relating to Medi-Cal mental health services.

LEGISLATIVE COUNSEL'S DIGEST

AB 754, as amended, Chesbro. Medi-Cal: mental health plans.

Existing law provides for the Medi-Cal program, administered by the State Department of Health Care Services, under which qualified low-income persons are provided with health care services, including mental health services. The Medi-Cal program is partially governed and funded under federal Medicaid provisions.

Under existing law, the State Department of Mental Health (department) is required to implement managed mental health care for Medi-Cal recipients through fee-for-service or capitate contracts with mental health plans. Existing law requires, for funding allocations and risk-sharing determinations and arrangements for specialty mental health services reimbursed through a fee-for-service payment system, that the

department allocate the contracted amount at the beginning of the contract period to the mental health plan.

This bill would, beginning July 1, 2011, exclude the Early Periodic Screening Diagnosis and Treatment (EPSDT) specialty mental health services provided under a Medi-Cal specialty mental health services waiver from being allocated *and distributed* at the beginning of the contract period.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5778 of the Welfare and Institutions Code
2 is amended to read:

3 5778. (a) This section shall be limited to specialty mental
4 health services reimbursed through a fee-for-service payment
5 system.

6 (b) The following provisions shall apply to matters related to
7 specialty mental health services provided under the Medi-Cal
8 specialty mental health services waiver, including, but not limited
9 to, reimbursement and claiming procedures, reviews and oversight,
10 and appeal processes for mental health plans (MHPs) and MHP
11 subcontractors.

12 (1) During the initial phases of the implementation of this part,
13 as determined by the department, the MHP contractor and
14 subcontractors shall submit claims under the Medi-Cal program
15 for eligible services on a fee-for-service basis.

16 (2) A qualifying county may elect, with the approval of the
17 department, to operate under the requirements of a capitated,
18 integrated service system field test pursuant to Section 5719.5
19 rather than this part, in the event the requirements of the two
20 programs conflict. A county that elects to operate under that section
21 shall comply with all other provisions of this part that do not
22 conflict with that section.

23 (3) (A) No sooner than October 1, 1994, state matching funds
24 for Medi-Cal fee-for-service acute psychiatric inpatient services,
25 and associated administrative days, shall be transferred to the
26 department. No later than July 1, 1997, upon agreement between
27 the department and the State Department of Health Care Services,
28 state matching funds for the remaining Medi-Cal fee-for-service

1 mental health services and the state matching funds associated
2 with field test counties under Section 5719.5 shall be transferred
3 to the department.

4 (B) The department, in consultation with the State Department
5 of Health Care Services, a statewide organization representing
6 counties, and a statewide organization representing health
7 maintenance organizations shall develop a timeline for the transfer
8 of funding and responsibility for fee-for-service mental health
9 services from Medi-Cal managed care plans to MHPs. In
10 developing the timeline, the department shall develop screening,
11 referral, and coordination guidelines to be used by Medi-Cal
12 managed care plans and MHPs.

13 (4) (A) (i) A MHP subcontractor providing specialty mental
14 health services shall be financially responsible for federal audit
15 exceptions or disallowances to the extent that these exceptions or
16 disallowances are based on the MHP subcontractor's conduct or
17 determinations.

18 (ii) The state shall be financially responsible for federal audit
19 exceptions or disallowances to the extent that these exceptions or
20 disallowances are based on the state's conduct or determinations.
21 The state shall not withhold payment from a MHP for exceptions
22 or disallowances that the state is financially responsible for
23 pursuant to this clause.

24 (iii) A MHP shall be financially responsible for state audit
25 exceptions or disallowances to the extent that these exceptions or
26 disallowances are based on the MHP's conduct or determinations.
27 A MHP shall not withhold payment from a MHP subcontractor
28 for exceptions or disallowances for which the MHP is financially
29 responsible pursuant to this clause.

30 (B) For purposes of subparagraph (A), a "determination" shall
31 be shown by a written document expressly stating the
32 determination, while "conduct" shall be shown by any credible,
33 legally admissible evidence.

34 (C) The department and the State Department of Health Care
35 Services shall work jointly with MHPs in initiating any necessary
36 appeals. The department may invoice or offset the amount of any
37 federal disallowance or audit exception against subsequent claims
38 from the MHP or MHP subcontractor. This offset may be done at
39 any time, after the audit exception or disallowance has been
40 withheld from the federal financial participation claim made by

1 the State Department of Health Care Services. The maximum
2 amount that may be withheld shall be 25 percent of each payment
3 to the plan or subcontractor.

4 (5) (A) Oversight by the department of the MHPs and MHP
5 subcontractors may include client record reviews of Early Periodic
6 Screening Diagnosis and Treatment (EPSDT) specialty mental
7 health services under the Medi-Cal specialty mental health services
8 waiver in addition to other audits or reviews that are conducted.

9 (B) The department may contract with an independent,
10 nongovernmental entity to conduct client record reviews. The
11 contract awarded in connection with this section shall be on a
12 competitive bid basis, pursuant to the Department of General
13 Services contracting requirements, and shall meet both of the
14 following additional requirements:

15 (i) Require the entity awarded the contract to comply with all
16 federal and state privacy laws, including, but not limited to, the
17 federal Health Insurance Portability and Accountability Act
18 (HIPAA; 42 U.S.C. Sec. 1320d et seq.) and its implementing
19 regulations, the Confidentiality of Medical Information Act (Part
20 2.6 (commencing with Section 56) of Division 1 of the Civil Code),
21 and Section 1798.81.5 of the Civil Code. The entity shall be subject
22 to existing penalties for violation of these laws.

23 (ii) Prohibit the entity awarded the contract from using, selling,
24 or disclosing client records for a purpose other than the one for
25 which the record was given.

26 (C) For purposes of this paragraph, the following terms shall
27 have the following meanings:

28 (i) "Client record" means a medical record, chart, or similar
29 file, as well as other documents containing information regarding
30 an individual recipient of services, including, but not limited to,
31 clinical information, dates and times of services, and other
32 information relevant to the individual and services provided and
33 that evidences compliance with legal requirements for Medi-Cal
34 reimbursement.

35 (ii) "Client record review" means examination of the client
36 record for a selected individual recipient for the purpose of
37 confirming the existence of documents that verify compliance with
38 legal requirements for claims submitted for Medi-Cal
39 reimbursement.

1 (D) The department shall recover overpayments of federal
2 financial participation from MHPs within the timeframes required
3 by federal law and regulation and return those funds to the State
4 Department of Health Care Services for repayment to the federal
5 Centers for Medicare and Medicaid Services. The department shall
6 recover overpayments of General Fund moneys utilizing the
7 recoupment methods and timeframes required by the State
8 Administrative Manual.

9 (6) (A) The department, in consultation with mental health
10 stakeholders, the California Mental Health Directors Association,
11 and MHP subcontractor representatives, shall provide an appeals
12 process that specifies a progressive process for resolution of
13 disputes about claims or recoupments relating to specialty mental
14 health services under the Medi-Cal specialty mental health services
15 waiver.

16 (B) The department shall provide MHPs and MHP
17 subcontractors the opportunity to directly appeal findings in
18 accordance with procedures that are similar to those described in
19 Article 1.5 (commencing with Section 51016) of Chapter 3 of
20 Subdivision 1 of Division 3 of Title 22 of the California Code of
21 Regulations, until new regulations for a progressive appeals process
22 are promulgated. When an MHP subcontractor initiates an appeal,
23 it shall give notice to the MHP. The department shall propose a
24 rulemaking package by no later than the end of the 2008–09 fiscal
25 year to amend the existing appeals process. The reference in this
26 subparagraph to the procedures described in Article 1.5
27 (commencing with Section 51016) of Chapter 3 of Subdivision 1
28 of Division 3 of Title 22 of the California Code of Regulations,
29 shall only apply to those appeals addressed in this subparagraph.

30 (C) The department shall develop regulations as necessary to
31 implement this paragraph.

32 (7) The department shall assume the applicable program
33 oversight authority formerly provided by the State Department of
34 Health Care Services, including, but not limited to, the oversight
35 of utilization controls as specified in Section 14133. The MHP
36 shall include a requirement in any subcontracts that all inpatient
37 subcontractors maintain necessary licensing and certification.
38 MHPs shall require that services delivered by licensed staff are
39 within their scope of practice. Nothing in this part shall prohibit
40 the MHPs from establishing standards that are in addition to the

1 minimum federal and state requirements, provided that these
2 standards do not violate federal and state Medi-Cal requirements
3 and guidelines.

4 (8) Subject to federal approval and consistent with state
5 requirements, the MHP may negotiate rates with providers of
6 mental health services.

7 (9) Under the fee-for-service payment system, any excess in
8 the payment set forth in the contract over the expenditures for
9 services by the plan shall be spent for the provision of specialty
10 mental health services under the Medi-Cal specialty mental health
11 service waiver and related administrative costs.

12 (10) Nothing in this part shall limit the MHP from being
13 reimbursed appropriate federal financial participation for any
14 qualified services even if the total expenditures for service exceeds
15 the contract amount with the department. Matching nonfederal
16 public funds shall be provided by the plan for the federal financial
17 participation matching requirement.

18 (c) The provisions of this subdivision shall apply to managed
19 mental health care funding allocations and risk-sharing
20 determinations and arrangements.

21 (1) The department shall allocate the contracted amount for the
22 *and distribute the full* managed mental health care program,
23 exclusive of the EPSDT specialty mental health services provided
24 under the Medi-Cal specialty mental health services waiver, at the
25 beginning of the contract period to the MHP. The allocated funds
26 shall be considered to be funds of the plan that may be held by the
27 department. The department shall develop a methodology to ensure
28 that these funds are held as the property of the plan and shall not
29 be reallocated by the department or any other entity of state
30 government for other purposes.

31 (2) Each fiscal year the state matching funds for Medi-Cal
32 specialty mental health services shall be included in the annual
33 budget for the department. The amount included shall be based on
34 historical cost, adjusted for changes in the number of Medi-Cal
35 beneficiaries and other relevant factors. The appropriation for
36 funding the state share of the costs for EPSDT specialty mental
37 health services provided under the Medi-Cal specialty mental
38 health services waiver shall only be used for reimbursement
39 payments of claims for those services.

1 (3) Initially, the MHP shall use the fiscal intermediary of the
2 Medi-Cal program of the State Department of Health Care Services
3 for the processing of claims for inpatient psychiatric hospital
4 services and may be required to use that fiscal intermediary for
5 the remaining mental health services. The providers for other
6 specialty mental health Medi-Cal services shall not be initially
7 required to use the fiscal intermediary but may be required to do
8 so on a date to be determined by the department. The department
9 and its MHPs shall be responsible for the initial incremental
10 increased matching costs of the fiscal intermediary for claims
11 processing and information retrieval associated with the operation
12 of the services funded by the transferred funds.

13 (4) The MHPs shall have sufficient funds on deposit with the
14 department as the matching funds necessary for federal financial
15 participation to ensure timely payment of claims for acute
16 psychiatric inpatient services and associated administrative days.
17 The department and the State Department of Health Care Services,
18 in consultation with a statewide organization representing counties,
19 shall establish a mechanism to facilitate timely availability of those
20 funds. Any funds held by the state on behalf of a plan shall be
21 deposited in a mental health managed care deposit fund and shall
22 accrue interest to the plan. The department shall exercise any
23 necessary funding procedures pursuant to Section 12419.5 of the
24 Government Code and Sections 8776.6 and 8790.8 of the State
25 Administrative Manual regarding county claim submission and
26 payment.

27 (5) The goal for funding of the future capitated system shall be
28 to develop statewide rates for beneficiary, by aid category and
29 with regional price differentiation, within a reasonable time period.
30 The formula for distributing the state matching funds transferred
31 to the department for acute inpatient psychiatric services to the
32 participating counties shall be based on the following principles:

33 (A) Medi-Cal state General Fund matching dollars shall be
34 distributed to counties based on historic Medi-Cal acute inpatient
35 psychiatric costs for the county's beneficiaries and on the number
36 of persons eligible for Medi-Cal in that county.

37 (B) All counties shall receive a baseline based on historic and
38 projected expenditures up to October 1, 1994.

39 (C) Projected inpatient growth for the period October 1, 1994,
40 to June 30, 1995, inclusive, shall be distributed to counties below

1 the statewide average per eligible person on a proportional basis.
2 The average shall be determined by the relative standing of the
3 aggregate of each county's expenditures of mental health Medi-Cal
4 dollars per beneficiary. Total Medi-Cal dollars shall include both
5 fee-for-service Medi-Cal and Short-Doyle Medi-Cal dollars for
6 both acute inpatient psychiatric services, outpatient mental health
7 services, and psychiatric nursing facility services, both in facilities
8 that are not designated as institutions for mental disease and for
9 beneficiaries who are under 22 years of age and beneficiaries who
10 are over 64 years of age in facilities that are designated as
11 institutions for mental disease.

12 (D) There shall be funds set aside for a self-insurance risk pool
13 for small counties. The department may provide these funds
14 directly to the administering entity designated in writing by all
15 counties participating in the self-insurance risk pool. The small
16 counties shall assume all responsibility and liability for appropriate
17 administration of these funds. For purposes of this subdivision,
18 "small counties" means counties with less than 200,000 population.
19 Nothing in this paragraph shall in any way obligate the state or the
20 department to provide or make available any additional funds
21 beyond the amount initially appropriated and set aside for each
22 particular fiscal year, unless otherwise authorized in statute or
23 regulations, nor shall the state or the department be liable in any
24 way for mismanagement of loss of funds by the entity designated
25 by the counties under this paragraph.

26 (6) The allocation method for state funds transferred for acute
27 inpatient psychiatric services shall be as follows:

28 (A) For the 1994–95 fiscal year, an amount equal to 0.6965
29 percent of the total shall be transferred to a fund established by
30 small counties. This fund shall be used to reimburse MHPs in small
31 counties for the cost of acute inpatient psychiatric services in excess
32 of the funding provided to the MHP for risk reinsurance, acute
33 inpatient psychiatric services and associated administrative days,
34 alternatives to hospital services as approved by participating small
35 counties, or for costs associated with the administration of these
36 moneys. The methodology for use of these moneys shall be
37 determined by the small counties, through a statewide organization
38 representing counties, in consultation with the department.

39 (B) The balance of the transfer amount for the 1994–95 fiscal
40 year shall be allocated to counties based on the following formula:

	County	Percentage
1	Alameda.....	3.5991
2	Alpine.....	.0050
3	Amador.....	.0490
4	Butte.....	.8724
5	Calaveras.....	.0683
6	Colusa.....	.0294
7	Contra Costa.....	1.5544
8	Del Norte.....	.1359
9	El Dorado.....	.2272
10	Fresno.....	2.5612
11	Glenn.....	.0597
12	Humboldt.....	.1987
13	Imperial.....	.6269
14	Inyo.....	.0802
15	Kern.....	2.6309
16	Kings.....	.4371
17	Lake.....	.2955
18	Lassen.....	.1236
19	Los Angeles.....	31.3239
20	Madera.....	.3882
21	Marin.....	1.0290
22	Mariposa.....	.0501
23	Mendocino.....	.3038
24	Merced.....	.5077
25	Modoc.....	.0176
26	Mono.....	.0096
27	Monterey.....	.7351
28	Napa.....	.2909
29	Nevada.....	.1489
30	Orange.....	8.0627
31	Placer.....	.2366
32	Plumas.....	.0491
33	Riverside.....	4.4955
34	Sacramento.....	3.3506
35	San Benito.....	.1171
36	San Bernardino.....	6.4790
37	San Diego.....	12.3128
38	San Francisco.....	3.5473
39	San Joaquin.....	1.4813
40		

County	Percentage
San Luis Obispo.....	.2660
San Mateo.....	.0000
Santa Barbara.....	.0000
Santa Clara.....	1.9284
Santa Cruz.....	1.7571
Shasta.....	.3997
Sierra.....	.0105
Siskiyou.....	.1695
Solano.....	.0000
Sonoma.....	.5766
Stanislaus.....	1.7855
Sutter/Yuba.....	.7980
Tehama.....	.1842
Trinity.....	.0271
Tulare.....	2.1314
Tuolumne.....	.2646
Ventura.....	.8058
Yolo.....	.4043

(7) The allocation method for the state funds transferred for subsequent years for acute inpatient psychiatric and other specialty mental health services shall be determined by the department in consultation with a statewide organization representing counties.

(8) The allocation methodologies described in this section shall only be in effect while federal financial participation is received on a fee-for-service reimbursement basis. When federal funds are capitated, the department, in consultation with a statewide organization representing counties, shall determine the methodology for capitation consistent with federal requirements. The share of cost ratio arrangement for EPSDT specialty mental health services provided under the Medi-Cal specialty mental health services waiver between the state and the counties in existence during the 2007–08 fiscal year shall remain as the share of cost ratio arrangement for these services unless changed by statute.

(9) The formula that specifies the amount of state matching funds transferred for the remaining Medi-Cal fee-for-service mental health services shall be determined by the department in consultation with a statewide organization representing counties.

1 This formula shall only be in effect while federal financial
2 participation is received on a fee-for-service reimbursement basis.

3 (10) (A) For the managed mental health care program, exclusive
4 of EPSDT specialty mental health services provided under the
5 Medi-Cal specialty mental health services waiver, the department
6 shall establish, by regulation, a risk-sharing arrangement between
7 the department and counties that contract with the department as
8 MHPs to provide an increase in the state General Fund allocation,
9 subject to the availability of funds, to the MHP under this section,
10 where there is a change in the obligations of the MHP required by
11 federal or state law or regulation, or required by a change in the
12 interpretation or implementation of any such law or regulation
13 which significantly increases the cost to the MHP of performing
14 under the terms of its contract.

15 (B) During the time period required to redetermine the
16 allocation, payment to the MHP of the allocation in effect at the
17 time the change occurred shall be considered an interim payment,
18 and shall be subject to increase effective as of the date on which
19 the change is effective.

20 (C) In order to be eligible to participate in the risk-sharing
21 arrangement, the county shall demonstrate, to the satisfaction of
22 the department, its commitment or plan of commitment of all
23 annual funding identified in the total mental health resource base,
24 from whatever source, but not including county funds beyond the
25 required maintenance of effort, to be spent on specialty mental
26 health services. This determination of eligibility shall be made
27 annually. The department may limit the participation in a
28 risk-sharing arrangement of any county that transfers funds from
29 the mental health account to the social services account or the
30 health services account, in accordance with Section 17600.20
31 during the year to which the transfers apply to MHP expenditures
32 for the new obligation that exceed the total mental health resource
33 base, as measured before the transfer of funds out of the mental
34 health account and not including county funds beyond the required
35 maintenance of effort. The State Department of Mental Health
36 shall participate in a risk-sharing arrangement only after a county
37 has expended its total annual mental health resource base.

38 (d) The following provisions govern the administrative
39 responsibilities of the department and the State Department of
40 Health Care Services:

(1) It is the intent of the Legislature that the department, and the State Department of Health Care Services consult and collaborate closely regarding administrative functions related to and supporting the managed mental health care program in general, and the delivery and provision of EPSDT specialty mental health services provided under the Medi-Cal specialty mental health services waiver, in particular. To this end, the following provisions shall apply:

(A) Commencing in the 2009–10 fiscal year, and each fiscal year thereafter, the department shall consult with the State Department of Health Care Services and amend the interagency agreement between the two departments as necessary to include improvements or updates to procedures for the accurate and timely processing of Medi-Cal claims for specialty mental health services provided under the Medi-Cal specialty mental health services waiver. The interagency agreement shall ensure that there are consistent and adequate time limits, consistent with federal and state law, for claims submitted and the need to correct errors.

(B) Commencing in the 2009–10 fiscal year, and each fiscal year thereafter, upon a determination by the department and the State Department of Health Care Services that it is necessary to amend the interagency agreement, the department and the State Department of Health Care Services shall process the interagency agreement to ensure final approval by January 1, for the following fiscal year, and as adjusted by the budgetary process.

(C) The interagency agreement shall include, at a minimum, all of the following:

(i) A process for ensuring the completeness, validity, and timely processing of Medi-Cal claims as mandated by the federal Centers for Medicare and Medicaid Services.

(ii) Procedures and timeframes by which the department shall submit complete, valid, and timely invoices to the State Department of Health Care Services, which shall notify the department of inconsistencies in invoices that may delay payments.

(iii) Procedures and timeframes by which the department shall notify MHPs of inconsistencies that may delay payment.

(2) (A) The department shall consult with the State Department of Health Care Services and the California Mental Health Directors Association in February and September of each year to review the methodology used to forecast future trends in the provision of

1 EPSDT specialty mental health services provided under the
2 Medi-Cal specialty mental health services waiver, to estimate these
3 yearly EPSDT specialty mental health services related costs, and
4 to estimate the annual amount of funding required for
5 reimbursements for EPSDT specialty mental health services to
6 ensure relevant factors are incorporated in the methodology. The
7 estimates of costs and reimbursements shall include both federal
8 financial participation amounts and any state General Fund amounts
9 for EPSDT specialty mental health services provided under the
10 State Medi-Cal specialty mental health services waiver. The
11 department shall provide the State Department of Health Care
12 Services the estimate adjusted to a cash basis.

13 (B) The estimate of annual funding described in subparagraph
14 (A) shall, include, but not be limited to, the following factors:

15 (i) The impacts of interactions among caseload, type of services,
16 amount or number of services provided, and billing unit cost of
17 services provided.

18 (ii) A systematic review of federal and state policies, trends
19 over time, and other causes of change.

20 (C) The forecasting and estimates performed under this
21 paragraph are primarily for the purpose of providing the Legislature
22 and the Department of Finance with projections that are as accurate
23 as possible for the state budget process, but will also be informative
24 and useful for other purposes. Therefore, it is the intent of the
25 Legislature that the information produced under this paragraph
26 shall be taken into consideration under paragraph (10) of
27 subdivision (c).

28 SEC. 2. Section 1 of this act shall become operative on July 1,
29 2011.